

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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QIAOSUN WU and JOHN DOES 1-10,

Plaintiffs,

-v-

BTL INTERNATIONAL CO., LTD. et al.,

Defendants.  
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11 Civ. 1202 (PAE) (GWG)

ORDER ADOPTING  
REPORT &  
RECOMMENDATION

PAUL A. ENGELMAYER, District Judge:

On February 22, 2011, plaintiffs filed their complaint in this Court. The case was referred to Magistrate Judge Gabriel W. Gorenstein for general pretrial proceedings. On June 2, 2011, plaintiffs filed an amended complaint; on June 6, 2011, plaintiffs filed a second amended complaint.

On October 20, 2011, Judge Gorenstein issued an order notifying plaintiffs of the Court's intention to dismiss the action on the ground that service has not been made within 120 days of the filing of the complaint as required by Federal Rule of Civil Procedure 4(m). Dkt. 8. The order indicated that if plaintiffs wished to move for an extension of time to serve the defendants, any such motion had to be filed on or before October 27, 2011.

On November 11, 2011, plaintiffs moved for an entry of default judgment against defendants. Dkt. 10. By order dated November 21, 2011, Magistrate Gorenstein denied plaintiffs' motion on the grounds that the motion failed to include proof of service on any defendant. Dkt. 12. The order directed plaintiffs to obtain a Certificate of Default from the Clerk of Court, and to make a proper motion for a default judgment, in accordance with the

S.D.N.Y. Local Rules, on or before December 31, 2011. The order indicated that if plaintiffs failed to move for default judgment by that date, the case would be dismissed for failure to prosecute. Plaintiffs never moved for default judgment, in violation of the November 21 order.

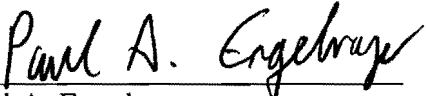
On March 12, 2012, Judge Gorenstein issued an Order to Show Cause requiring that the plaintiff submit an affidavit and memorandum of law, on or before April 4, 2012, showing cause why the case should not be dismissed pursuant to Rule 41(b) and/or Rule 4(m). Dkt. 14. Plaintiffs have not filed any response to the Order to Show Cause.

On April 14, 2012, Judge Gorenstein issued a Report and Recommendation recommending that the Court dismiss this action, with prejudice, for plaintiffs' failure to prosecute. The Report and Recommendation informed plaintiffs that, pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b), the parties had 14 days from the date of the Report and Recommendation to serve and file written objections. Neither plaintiffs nor defendants have filed any objection.

When no objections to a report and recommendation are made, the Court may adopt the report if there is no clear error on the face of the record. *See, e.g., Walker v. Clemson*, No. 11-cv-9623, 2012 WL 3711449 (S.D.N.Y. Aug. 28, 2012); *Adee Motor Cars, LLC v. Amato*, 388 F. Supp. 2d 250, 253 (S.D.N.Y. 2005). After reviewing the record, the Court finds that Judge Gorenstein's thorough and well reasoned Report is not facially erroneous. Accordingly, the Court adopts the Report in its entirety, and for the reasons set forth therein, dismisses the second amended complaint in its entirety.

The Clerk of Court is directed to terminate this case.

SO ORDERED.

  
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Paul A. Engelmayer  
United States District Judge

Dated: September 4, 2012  
New York, New York